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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-199937 **DATE:** October 2, 1981
MATTER OF: Parker Hannifin Corporation

DIGEST:

1. Agency cannot restrict consideration of alternative sources by simply assigning spare part to a material control classification which requires that the part be purchased from the original equipment manufacturer. Manufacturer of alternative part must be given opportunity to demonstrate suitability of alternative product, and any restriction of competition must be separately justified under procurement statutes.
2. Sole source justification is not adequate where record shows that other manufacturers have produced same parts satisfactorily in prior procurements utilizing more rigid manufacturing and inspection controls by Government.
3. Fact that alternative part is not guaranteed when used with components of original manufacturer is not adequate to justify sole source award since original manufacturer does not guarantee replacement parts when used with its own components.

Parker Hannifin Corporation (Parker) protests the designation of Crawford Fittings Company (Crawford) "Swagelok" products as the only acceptable source of pressure tube fittings under solicitation No. N00221-80-R-0216 issued by Mare Island Naval Shipyard, Vallejo, California (Navy). The fittings in question are intended for use as replacements for, or repair of, Swagelok fittings presently used to connect piping to instrumentation and other equipment associated with nuclear propulsion systems on board ships.

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The Navy justifies this restriction upon competition on the basis that the source of replacement parts is limited to the original manufacturer under the material control classification presently assigned these fittings. Because we do not believe that simple assignment of a part to a given material control level justifies source restriction and because the record does not otherwise support sole source procurement, the protest is sustained.

BACKGROUND

The Navy maintains a material control system which, among other things, classifies items according to the degree of Government supervision required during production. The fittings in question were originally assigned to the most critical category, material control Level I, but were reclassified to Level III for cost reasons prior to the issuance of the protested solicitation.

This solicitation was originally issued on a "brand name or equal" basis, but was subsequently amended to specify only Swagelok fittings. The stated purpose of this change was to reflect the reclassification of the fittings from material control Level I to Level III.

For Level I materials, the Navy requires rigid manufacturing controls, including testing, identification and certification, which the Government oversees through reporting and inspection. The Navy will accept parts produced by firms other than the original equipment manufacturer in such circumstances, so long as they satisfy the various controls imposed upon manufacturing. The Navy advises that manufacturers other than Crawford successfully produced the pressure tube fittings in question during the period of Government supervised production.

Because there is no Government supervision of manufacturing processes for Level III material control, the Navy advises that it routinely restricts its sources in such cases to components produced by the original equipment manufacturer or its suppliers. Since these particular fittings have been reclassified as Level III materials, the Navy has restricted its procurements to Swagelok products when replacing Swagelok fittings and to Parker products when replacing Parker fittings.

CONTENTIONS

Parker contends that its pressure tube fittings, either completely assembled as a unit or as components, are interchangeable with counterpart Swagelok fittings. Parker has submitted extensive documentation intended to show that its fittings are designed to interchange with Swagelok fittings on a dimensional and function basis, albeit with certain design differences, particularly Parker's use of one ferrule ring to serve the function of Crawford's two ferrule rings. Parker therefore urges that its products be considered and evaluated as acceptable substitutes for Swagelok fittings in future Navy procurements.

Both the Navy and Crawford disagree. Crawford has issued Product Notice No. 2-78 cautioning against interchange of pressure tube fittings made by other manufacturers with Swagelok fittings and specifically advising against the mixed use of Parker and Swagelok components in certain instances. Parker's unwillingness to guarantee such mixed applications, or to indemnify against loss resulting from mixed use, is cited as proof of the unsuitability of Parker fittings for mixed use with, or replacement of, Crawford products.

The Navy argues that comparable configuration and dimensions alone are not sufficient to demonstrate interchangeability of parts; it claims that the original equipment manufacturer's extensive knowledge and experience, including developmental testing and manufacturing procedures, must also be taken into account. Since the Navy does not exercise control over manufacturing processes in Level III procurements, the Navy cannot assure the necessary degree of reliability if it does not restrict procurement of replacement parts to the original equipment manufacturer. Further, the Navy stresses the severe consequences should a fitting fail while a nuclear powered vessel is operating, including potential loss of the ship and injury to personnel.

The Navy therefore concludes that its actions are consistent with Defense Acquisition Regulation (DAR) § 1-313 (1976 ed.), which provides that parts "used for replacement of stock, repair, or replacement, must be procured so as to assure the requisite safe, dependable,

and effective operation of the equipment" and that "where this assurance can be had only if the parts are procured from the original manufacturer of the equipment or his supplier, the procurement should be restricted accordingly." The Navy argues alternatively that sole source procurement is justified in these circumstances without regard to DAR § 1-313.

MATERIAL CONTROL LEVEL

We have held that the act of classifying a procurement within a particular approved source system cannot preclude consideration of offers from unapproved sources which would otherwise qualify. Rotair Industries; D. Moody & Co., Inc., 58 Comp. Gen. 149 (1978), 78-2 CPD 410. In Rotair, the agency took the position that procurement method coding of helicopter parts was a reasonable exercise of procurement authority contemplated by DAR § 1-313. In response, we stated:

"We believe that [DAR] § 1-313 does not constitute a mandate to effect sole-source awards regardless of the capability of producers which have not previously supplied the parts in question. Reliability assurance and interchangeability of parts may also be obtained through competitive negotiation procedures. B-166435, July 1, 1969. In our decision in 50 Comp. Gen. 184, 189 (1970), we indicated that to preclude competitive procurement of parts on the basis of the assignment of a certain PMC without regard to the willingness or ability of other sources to produce the parts would contravene the concept of 'maximum practical competition.' We concluded in that case that designating parts 'engineering critical,' a standard similar to that used in procurement method coding, had perpetuated an unjustified sole-source position, and recommended that the procuring activity institute a qualification test program to determine the acceptability of parts offered by alternate sources. Id. at 191."

In a similar case we upheld the right of the Defense Electronic Supply Center (DESC) to procure on the basis of the specified manufacturer's part number where DESC

relied upon DAR § 1-313(c) to designate as "source controlled" replacement parts for critical radar and weapons systems. Fil-Coil Company, Inc., B-198105, October 21, 1980, 80-2 CPD 304. However, DESC permitted consideration of alternative replacement parts in these circumstances, provided offerors could show that their products were either identical or functionally, physically, mechanically and electronically interchangeable with the specified part.

These cases reflect our Office's consistent position that agencies must give alternative producers an opportunity to qualify when procuring replacement parts pursuant to DAR § 1-313(c). Thus, we do not agree that reclassification to material control Level III is by itself a valid basis for restricting the source of these fittings to the original manufacturer.

SOLE SOURCE JUSTIFICATION

The Navy does not question Parker's contention that its parts are comparable to Crawford's in configuration and dimension. Instead, the Navy relies upon its inability to gauge whether Parker's manufacturing processes, know how, and experience are comparable to Crawford's.

Under current Navy practice, the sole determinant for the source of a replacement fitting is ascertaining the identity of the manufacturer of that fitting. Other than this, the record shows that both Parker and Swagelok fittings are used by the Navy under comparable operating conditions in comparable installations in nuclear powered vessels. Consequently, there is no basis to support the Navy's argument that Parker's manufacturing processes are somehow an unknown element which may prove unreliable while Swagelok's are necessarily reliable.

The Navy further suggests that its technicians may be confused when replacing ferrule rings in mixed applications since Parker's single ferrule ring serves the function of Swagelok's dual ring. We point out that this limited potential for confusion already exists to a degree because both firms' products are now routinely used in the fleet. In any event, since the Navy does not question the overall dimensional comparability of the two manufacturer's products, it should be possible to interchange complete replacement units without confusing Navy technicians.

With respect to the assertion that Parker will not guarantee its fittings when used with components manufactured by others, the record does not indicate that either Parker or Crawford guarantees its products when used with its own fittings. Since there is no guarantee

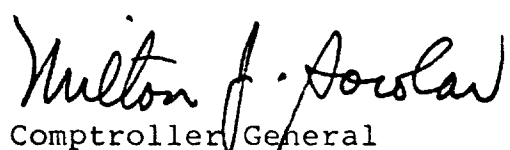
when only the original manufacturers' products are used, the presence or absence of a guarantee when different products are intermixed does not appear relevant to meaningful analysis of the issue of interchangeability.

Generally, in determining the propriety of a sole source solicitation, the standard to be applied is one of reasonableness--unless it is shown that the contracting officer acted without a reasonable basis, our Office will not question the solicitation. Pioneer Parachute Co., Inc., B-190798, B-191007, June 13, 1978, 78-1 CPD 431. Here, the record shows that the fittings in question were actually produced by others in the past, which indicates that a sole source procurement could not have been justified at that time. The Navy's subsequent election to classify these items under a material control category limited to the original equipment manufacturer may have been administratively convenient, but that reason alone is not an adequate justification for restricting competition at this juncture. Kent Watkins & Associates, Inc., B-191078, May 17, 1978, 78-1 CPD 377. Accordingly, we do not agree that the record supports sole source procurement of Swagelok replacement parts.

CONCLUSION

Because delivery has been completed, corrective action is not feasible in this case. As to the future, we recognize that the Navy cannot accept substitute components for these applications without assurance of safe, proper performance. We therefore are recommending that the Navy establish appropriate procedures to determine whether alternate components manufactured by firms that can demonstrate that they possess the requisite knowhow, compatible designs, manufacturing standards and quality control procedures can be effectively substituted for the products of the original manufacturer. If such procedures demonstrate that alternate fitting are in fact interchangeable, subsequent procurements of these items should not be restricted to the original manufacturer. This recommendation is not intended to suggest that the Navy is required to return to material control Level I to satisfy its needs. Our purpose is only to assure that qualified firms are not unreasonably excluded from the competition.

The protest is sustained.


Acting Comptroller General
of the United States